**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF LOUISIANA**

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| THE STATE OF LOUISIANA, By and through its Attorney General, JEFF LANDRY, et al.,<br>PLAINTIFFS,<br><br>v.<br><br>JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; et al.,<br>DEFENDANTS. | CIVIL ACTION NO. 2:21-cv-778-TAD-KK |

**Request for Judicial Notice**

Plaintiff States respectfully request this Court take judicial notice of materials relevant to Defendants' Motion to Dismiss.[1]

On July 27, 2021, Secretary of the Interior Deb Haaland testified before the Senate Committee on Energy and Natural Resources.[2] At the hearing, the Secretary admitted that "the Pause is still in place." *See* Ex. A, 1:00:23. The Secretary also admitted that "the pause that you're referring to, that President Biden ordered in his executive order, is, I suppose it's in effect." *See* Ex. A., 59:43. Upon being asked "[w]hat action has the department taken to be in compliance with the judge's ruling" and whether "there has been any decisions to reinstate leases, lease sales" and "specifically ... lease sale 257," the Secretary refused to give an answer. *See* Ex. A, 1:01:01-11.[3]

These statements directly contradict Defendants' key argument that there is not "a single discrete agency action tantamount to a program-wide moratorium." Doc. 128-1, at 20. Indeed,

[1] Plaintiff States have conferred with Defendants via email and provided Defendants with a draft of this request. Defendants responded that they "have not yet formulated a position on Plaintiff's motion for judicial notice and reserve the right to respond to that motion within the time allowed under the local rules."

[2] https://youtube/rCaE4XdwgGw

[3] Contemporaneous with filing this Motion, Plaintiff States have mailed to the Court a DVD containing this testimony along with a Notice of Manual Attachment.

Defendants repeat this assertion throughout their Motion. *See id.* at 11 ("The Order does not unilaterally impose any such moratorium."); *id.* at 19 ("none of those actions purports to constitute an across-the-board moratorium on lease sales"); *id.* at 21 ("Like the 'so-called 'land withdrawal review program' in Lujan, the term 'moratoriums' 'is not derived from any authoritative text' from the agency but 'is simply the name by which [Plaintiffs] have occasionally referred to the continuing (and thus constantly changing) operations of the BLM' and BOEM in evaluating oil and gas lease sales."); *id.* at 22 ("In sum, Plaintiffs' challenges to the so-called moratoriums are not cognizable under the APA and must be dismissed, because 'the term action as used in the APA is a term of art that does not include all conduct such as, for example, . . . operating a program.'").

Federal Rule of Evidence 201 allows the Court to take judicial notice of Secretary Haaland's statements because they "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b)(2). "[T]he movant must identify the fact to be noticed, the purpose and relevance of that fact, and 'the source of 'indisputable accuracy' for a fact that can be 'accurately and readily determined' under Rule 201(b)(2)." *Luv n' care, Ltd. v. Jackel Int'l Ltd.*, 502 F. Supp. 3d 1106, 1108 (W.D. La. 2020). The fact to be noticed is Secretary Haaland's statement that a Pause is in effect and that it was ordered by President Biden. This fact is relevant because it contradicts Defendants' previous assertions that no Pause exists. The fact that these statements were uttered by the Secretary under oath is indisputably attested to by the video footage taken by the United States Senate. Accordingly, the Court should take judicial notice of these statements in considering Defendants' Motion to Dismiss. *See id.* at 1009 (noting courts "may take judicial notice of certain matters when considering a motion to dismiss").

Respectfully submitted,

Dated: August 4, 2021

*/s/ Joseph S. St. John*

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**Admitted Pro Hac Vice*
***Motion for Pro Hac Vice admission forthcoming*